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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,588	08/25/2000	Michel Lesimple	10767-002001	6960

26161 7590 03/21/2003

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/648,588

Applicant(s)

Lesimple

Examiner

Charles Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 Jan 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 51 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 08/748,891.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9 6) ☐ Other: \_\_\_\_\_

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## **OFFICE ACTION**

### ***Status***

1. The submission of a supplemental amendment filed 27 JAN 2003 in response to the interview of 21 JAN 2003 (Paper No. 11) is acknowledged. The unmailed final rejection discussed during the interview, Paper No. 10, is vacated and voided from the prosecution history to consider the supplemental amendment which presents revisions agreed upon during the interview of 21 JAN 2003. Claims 1-37 and 51 are pending. Claims 38-50 have been canceled.

### ***Priority***

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been filed in parent application, Serial No. 098/748,891, filed on 08 OCT 1996.

### ***Information Disclosure Statement***

3. Note the attached PTO-1449 form submitted with the Information Disclosure Statements filed 4 NOV 2002.
4. The information disclosure statement filed 13 JAN 2003 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

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The IDS filed 13 JAN 2003 states a check for \$180 was enclosed, yet the IDS is stamped "The PTO did not receive the following listed item(s): a check for \$180.00".

***Reissue Oath/Declaration***

5. The reissue oath/declaration filed 17 APR 2002 is defective because:

(a) It does not identify the mailing or post office address of each inventor. A mailing or post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing or post office address should include the ZIP Code designation. The mailing or post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

(b) It does not state whether the inventor is a sole or joint inventor of the invention claimed.

(c) It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration. The underlined language is missing.

(d) It does not identify the foreign application for patent on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date

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before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing. See MPEP 1417.

6. Claims 1-37 and 51 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) which addressees the above deficiencies will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

### ***Assignee***

7. The written consent of all assignees owning an undivided interest in the patent filed 25 AUG 2000 is acceptable.

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### ***Surrender of Patent***

8. The offer to surrender the original patent is acknowledged. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### ***Drawings***

9. Requirements for drawings in reissue applications are found in 37 CFR 1.174 and MPEP 1413.

10. The request to transfer original drawings from the patent is denied. Patent drawings can no longer be transferred from the patented application (MPEP 1413). Formal drawings will be required when the instant application is allowed.

### ***Recapture***

11. Upon reconsideration and in view of Applicant's remarks, the instant application is not deemed to improperly recapture claimed subject matter deliberately canceled in the application for the patent upon which the present reissue is based.

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***Claim Objections***

12. Claim 51 is objected to because in line 2, it appears "paint can cover" should be --can cover-- to agree with the claims from which it depends.

***Claim Rejections***

13. The supplemental amendment filed 27 JAN 2003 overcomes the outstanding 35 USC 112 rejections and prior art rejections for the reasons set forth in the interview summary, Paper No. 11 and in view of Applicant's arguments filed 27 JAN 2003.

***Allowable Subject Matter***

14. Claims 1-27 and 51 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 251.

15. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

Upon reconsideration of the pending claims, the closest prior art (the patent to Neri) does not meet amended claims 15 and 29 for the reasons advanced by Applicant in the supplemental amendment filed 27 JAN 2003.

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**Conclusion**

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. **ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

18. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.

Dated: 11 February 2003



**Charles Cooley  
Primary Examiner  
Art Unit 1723**